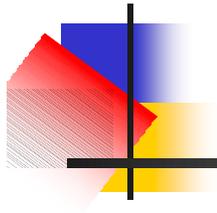
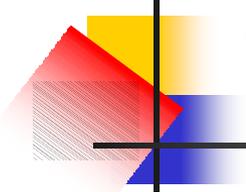


Issues in Litigating Hospital Mergers



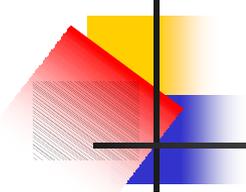
Back to Basics

David A. Argue
Economists Incorporated



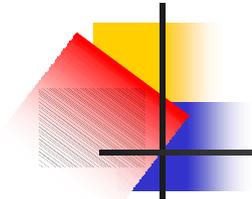
Merger Guidelines: The Framework

- Hypothetical monopolist/smallest group of suppliers paradigm
- Fundamental analytical principles
 - Internally consistent theories
 - Dynamic analysis



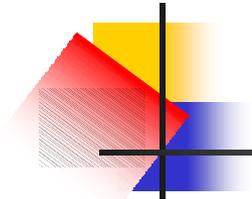
Internal Consistency

- Posit causal link between merger and harm
- Adherence to fundamental assumptions
- Consistency as to source of market power
- Consistency as to ways market power exercised



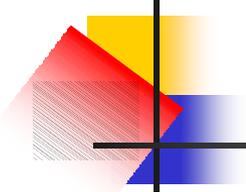
Dynamic Analysis

- Hypothetical monopolist framework is forward-looking
- Static analysis is inadequate
- Courts recognize and expect dynamic analysis



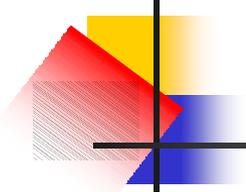
Merger Guidelines: Key Concepts

- Market definition
- Shares and concentration
- Entry



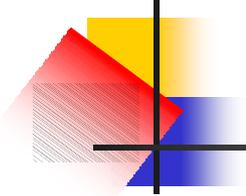
Market Definition: How Much is Enough?

- Basic question from the Merger Guidelines
- Critical Loss threshold
- Acceptance by the courts



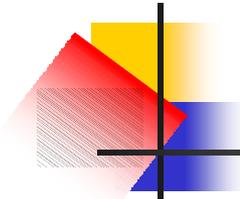
Market Definition: Will Critical Loss be Exceeded?

- Patient origin data
- Payors' mechanisms for influencing patient choice
- Opinions of market participants



Shares and Concentration

- Must be based on properly defined markets
- Only one of many factors to be considered
- Difficulties in measuring shares in hospital markets
- View of courts



Entry

- Little historical consideration
- Becoming increasingly important in many markets